

Michigan Department of Civil Service

REGULATION

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| Appointing Authority Letter Reference: CS- 6858 | Effective Date: August 11, <u>1997 August 20,</u> <u>2000</u> | Index Reference: Technical Appeals | Regulation Number: 2.03 |
| Issuing Bureau: Office of Compliance <u>Technical</u> <u>Appeals</u> | Rule Reference: Rules 2- 20B-19 and 4-3- 1 | | Replaces: Regulation 4.14 ; Advisory S-120-87 ; and Sections 8-401 and 8- 402 of the Grievance and Appeals Procedures 2.03 <u>(August 11, 1997, CS</u> <u>6858)</u> |
| Subject: TECHNICAL APPEAL PROCESS | | | |

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NOTE: ~~THIS REGULATION SUPERSEDES CLASSIFICATION REGULATION 4.14, ISSUED VIA APPOINTING AUTHORITY LETTER CS-6803, WITH AN EFFECTIVE DATE OF JULY 14, 1996; SECTIONS 8-401 AND 8-402 OF THE GRIEVANCE AND APPEALS PROCEDURE FOR EMPLOYEES IN THE STATE CIVIL SERVICE; AND ADVISORY BULLETIN S-120-87, ISSUED OCTOBER 29, 1987.~~

1. 100. AUTHORITY AND PURPOSE

~~102.~~ Rule 2-19 establishes the basic standards and procedures for filing and processing technical complaints. This regulation establishes supplementary standards and procedures approved by the State Personnel Director to implement Rule-rule 2-19.

200-2. CIVIL SERVICE COMMISSION RULE REFERENCE

~~101.~~ **Authority.** This regulation is issued by the State Personnel Director, under authority granted in Article 11, Section 5, of the Michigan Constitution and Civil Service Commission Rule A.2-13.52-13.51-3 **Implementation of Rules Regulations.** -- The state personnel director ~~shall~~is authorized to issue ~~such additional~~ regulations ~~as that the director deems to be are~~ necessary or useful, ~~to implement these rules.~~ A regulation issued by the state personnel director shall be binding on the department of civil service unless the commission finds that the regulation violates a rule. The state personnel director shall make all regulations available to employees through their personnel offices and the internet.

B. ~~301. Civil Service Commission Rule 2-20B.22-19.1.~~ Appeal of Technical Decision Authorized. — A person directly affected and aggrieved by a technical decision ~~is authorized to may~~ file a technical appeal within ~~fourteen~~ 14 calendar days after the date of mailing of the technical decision. The technical appeal ~~shall~~must be filed with the department of civil service.

C. ~~2-20B.32-2-19.2~~ Administrative Denial of Appeal. -- The department of civil service may administratively dismiss a technical appeal without prior notice or hearing for any of the following reasons:

- (a) The department of civil service lacks jurisdiction over a necessary party or over the subject matter of the technical appeal.
- (b) The technical appeal is untimely.
- (c) Another pending action involves the same parties and substantially the same or similar claims.
- (d) The technical complainant is not authorized to file a technical complaint.

801. Civil Service Commission Rules 2-20B.4 and 2-20B.5.

D. ~~2-20B.42.19.3~~ Civil Service Technical Appeal Procedures. — If the technical appeal is not administratively dismissed, it ~~shall be~~is referred to a technical

appeal officer for disposition. The technical appeal officer shall conduct an expeditious review ~~of the technical appeal~~ in accordance with ~~these rules and regulations issued by the state personnel director~~ civil service rules and regulations. The technical appeal officer shall decide the matter based on the departmental records and the written submissions of any interested persons. The technical appeal officer is not authorized to conduct a hearing, but may meet with the technical complainant and other interested persons to review and discuss the appeal. The technical appeal officer shall issue a written technical appeal decision.

E. 2-20B.52-19.4 Further Appeal. — A person who participated in the technical appeal and is directly affected and aggrieved by the decision of a technical appeal officer may file an application for leave to appeal with the ~~employment relations board~~ civil service commission. *[Ref. Commission Meeting July 2000].*

F. 4-3.1 Authorized Appeals .-- Only the appointing authority may appeal the ~~allocation classification~~ of a newly established position. ~~Both~~ Either the appointing authority ~~and the or an~~ adversely affected ~~incumbent employee~~ may appeal a change in the ~~allocation classification or classification level~~ of a previously established position through authorized technical appeal procedures: ~~The appeal shall be made through~~ authorized technical appeal procedures.

3. DEFINITIONS

201. A. Civil Service Commission Rule Definitions: 2-20B.1

Rule 2-20B.1 Definitions. — *As used in these rules:*

- 1. (a) Technical decision** means an individual decision by staff of the department of civil service made under the civil service commission's constitutional power (1) to classify all positions in the classified service according to their respective duties and responsibilities, (2) to determine the qualifications and fitness of all candidates for positions in the classified service, or (3) to approve or disapprove disbursements for personal services.⁺
- 2. (b) Technical complaint** means a written complaint that a technical decision (1) ~~violated-violates~~ article 11, section 5, of the ~~Michigan~~ constitution, (2) ~~violated-violates~~ a civil service rule or regulation, (3) ~~lacked-lacks~~ a rational basis, or (4) ~~was-is~~ an abuse of discretion.

⁺ Until further notice, the ~~"Redetermination and Appeals Procedure for Review of Requests to Contract for Personal Services," Section 8-403 of the Grievance and Appeals Procedure for Employees in the State Civil Service,~~ is to be used to process appeals of approvals to contract for personal services.

3. (e)—*Technical complainant* means any of the following persons when ~~the person is~~ directly affected and aggrieved by ~~the a~~ technical decision:

(1) An applicant for employment.

(2) A classified employee.

(3) An appointing authority.

(4) The office of the state employer.

(5) Any other person or organization authorized by civil service rule or regulation to file a technical complaint.

4. (d) Department means the Department of Civil Service.

202. B. Additional Definitions. As used in these regulations:

~~a. Department means the Department of Civil Service.~~

~~b. Appeal~~ means a technical complaint filed with the Office of Technical Appeals.

300.4. FILING OF COMPLAINTS

302. A. Filing a Technical Complaint. Technical complaints shall be filed with the Department of Civil Service, Office of ~~Compliance~~ Technical Appeals. Complaints must be submitted using the appropriate subject-matter version of the *Request for Technical Appeal* (Form CS-212). A copy of technical complaints regarding classification decisions shall be filed with the appointing authority.

303. B. Complaint. The complaint shall include, ~~at the minimum,~~ the following:

~~a. 1.~~ All information required in Part A of the Request for Technical Appeal (Form CS-212) ~~for each complainant~~.

~~b. 2.~~ A clear and concise ~~statement~~ description of the technical decision being appealed.

~~c. 3.~~ A ~~complete~~ clear statement ~~of the reasons~~ alleging why the technical decision (1) ~~lacked~~ lacks a rational basis; (2) ~~was~~ is an abuse of discretion; (3) ~~violated~~ violates Article II, Section 5 of the Michigan Constitution; or (4) ~~violated~~ violates a Civil Service rule or regulation.

~~d. 4.~~ ~~Any and a~~ All documentary evidence that the complainant believes supports the technical complaint.

~~E~~5. A clear statement of the desired outcome of the appeal. The outcome must be within the authority of the department to grant.

~~F~~6. The signature of each complainant.

~~G~~7. The name and mailing address of the complainant's representative, if any.

304.C. Time Limitations for Filing Technical Complaints. To be timely, a technical complaint must be received by the Office of ~~Compliance~~Technical Appeals within ~~fourteen (14)~~ calendar days of the date of the mailing of the technical decision.

305.——D. Extension for Filing. Upon filing an explanation of good cause ~~shown in writing and filed~~ with the Office of ~~Compliance~~Technical Appeals before the expiration of the required time for filing, the technical appeals officer may grant an extension of time ~~in which to~~for filefiling.

400.5. ADMINISTRATIVE DENIAL OF APPEAL

~~401. Civil Service Commission Rule 2-20B.319.2.~~

402.A. Additional Reasons for Administrative Denial. In addition to the reasons listed in Rule 2-~~20B.319.2~~, a technical appeal may be administratively dismissed without prior notice for any of the following reasons:

~~a~~1 The technical complaint fails to set forth allegations with sufficient particularity to permit review.

~~B~~2. The technical complaint involves one or more of the following actions, decisions, and matters that are not subject to appeal:

~~(1)~~a. *Michigan Civil Service Commission Rules* and merit principles.

~~(2)~~b. Department of Civil Service regulations, standards, and procedures.

~~(3)~~c. The official classification plan, including: classification specifications; job-evaluation factors; and the policies, procedures, and other official publications for administration of the classification system.

~~(4)~~d. The establishment, abolishment, or modification of a classification.

~~(5)~~e. The job evaluation factoring for a classification.

~~(6)~~f. The pay range assigned to a classification.

~~(7).~~ Classification restrictions.

~~(8)g.~~ Classifications preauthorized for position establishment and ~~reallocation~~ reclassification to any or all agencies.

~~(9)h.~~ Examination Appraisal method and content.

~~(10)i.~~ Examination—scoring Appraisal determination, including: section/item weights, passing points, ~~bandwidths, oral appraisal/in-basket ratings,~~ and experience and education rating charts.

~~(11)j.~~ Examination Appraisal method administration decisions:

- ~~(a1)~~ Replacing or combining ~~employment lists~~ applicant pools.
- ~~(b2)~~ Scheduling examinations and filing requirements.
- ~~(c3)~~ Limitations on examination appraisal participation.

~~C3.~~ The complaint fails for other good and sufficient reason to warrant further review.

5006. AUTHORIZED TO APPEAL

502A. Employee Organization. An employee organization cannot file an appeal of a classification action. An employee organization is limited to serving as the representative for the technical complainant.

503B. Preauthorized Classification. A classification appeal for a position in a preauthorized classification will be accepted only if the department made the classification decision. If an appointing authority denies a preauthorized ~~classification reallocation~~ reclassification, the ~~incumbent employee~~ must first file a request for a position review with the department, in accordance with Classification Regulation 4.09, on "Employee Generated Position Reviews."

504C. Work Performance Disputes. Disputes concerning the evaluation of an ~~incumbent's employee's~~ work performance are not subject to a technical appeal, but may be a subject for grievance, in accordance with ~~Part 2 regulation 2.04, of the "Grievance and Appeal Procedures for Employees in the State Civil Service," Department of Civil Service Employee Relations Policy and Procedures (August 1985),~~ or the appropriate collective bargaining unit agreement grievance procedure.

505D. Group Appeals. Class action ~~suits~~ appeals are not permitted ~~by the Department of Civil Service Employee Relations Policy and Procedures (August 1985).~~ Incumbents-Employees in the same classification may join together to file a group appeal of a denied or modified classification action. The ~~incumbents employees~~ employees must be performing the same duties and responsibilities and must have occupied their positions for one year (2,080 hours). Only ~~incumbents employees~~ employees who sign the Request for Technical Appeal (Classifications), form CS-212a ~~form~~, will be considered appellants.

6007. IMPLEMENTING APPEAL DECISIONS

601A. Effective Date of Appeal Decisions. The effective date assigned as a result of a classification technical appeal decision will coincide with the beginning date of the pay period in which the original request for a position review was received. If a request for a position review was submitted by the appointing authority, the effective date assigned will be in accordance with Classification Regulation 4.04, on "Effective Dates for Classification Actions." If the position review request was submitted by the employee, the effective date assigned will be in accordance with Classification Regulation 4.09, on "Employee Generated Position Reviews."

602B. Parties ~~to~~ Granted Relief. Only technical complainants listed on the Request for Technical Appeal form may obtain the full relief granted in response to the appeal, including the effective date of the original position review. Other similarly situated individuals may be granted the same classification relief, but on a prospective basis only.

603C. Effects of Vacating a Position. If an ~~incumbent employee~~ vacates a position prior to the completion of the appeal process and ultimately prevails, the following processes will occur:

a1. The employee who appealed the classification action will receive compensation in the awarded classification, retroactive to the effective date of the original position review and up to the date the employee vacated the position.

B2. The employee will have reinstatement rights in the awarded classification, as described by the *Michigan Civil Service Commission Rules* and Department of Civil Service regulations.

C3. If the employee vacated the position as a result of a reduction in force, the employee's name will be placed on the appropriate recall list for the awarded classification.

D4. The awarded classification is limited to the position that gave rise to the appeal and cannot be transferred to other positions.

604D. **Effect of Decision on Subsequent Incumbent Employee.** In a successful classification appeal, ~~where~~ when the ~~incumbent employee~~ who filed the appeal has vacated the position and a new ~~incumbent employee~~ has been appointed to the position, the position will remain at the previous classification until the successor has satisfactorily performed the duties for one year (2,080 hours). The position may be ~~reallocated~~ reclassified to the awarded classification before ~~the one year~~ (2,080 hours), if the successor satisfies one of the criteria for an early reallocation described in Classification Regulation 4.05, on "Frequency of Review of Positions."

7008. GRIEVANCE SETTLEMENTS

701A. Grievance Settlements. An appointing authority cannot unilaterally settle a classification dispute through a grievance or arbitration covered by a collective bargaining ~~unit contract~~ agreement or ~~the "regulation 2.04, Grievance and Appeal Procedures for Employees in the State Civil Service"~~, that may violate the provisions of Chapter Four of the *Michigan Civil Service Commission Rules*, on "Classification Rules," or any Department of Civil Service regulations, standards, or procedures. The appointing authority must contact the department to review and obtain approval of a classification dispute settlement prior to any settlement offers. Classification actions that cannot be settled in the grievance forum are those listed in Part 402 (b) of this regulation and the following:

a1. _____ The ~~allocation~~ classification of a position.

B2. The assignment of an effective date.

C3. The assignment of position sub-class codes.

D4. The determination of working-out-of-classification assignment in instances where the performed duties and responsibilities are not those of an existing properly classified position.

- E5. Classification appeal decisions or the decisions of the Employment Relations Board and the Civil Service Commission.

8009. CIVIL SERVICE TECHNICAL APPEAL PROCEDURES

802. Procedures.

| <u>Responsibility</u> | <u>Action</u> |
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| Department of Civil Service Technical Complainant | 1. Mails technical decision. 2. Prepares and submits technical complaint to the Office of <u>Compliance Technical Appeals</u> , Department of Civil Service. 3. Provides a copy of the technical complaint to the appointing authority, if required. |
| Office of <u>Compliance Technical Appeals</u> | 4. Upon receipt of the technical complaint, conducts preliminary review and to determines if there is a meritorious basis for appeal timeliness and sufficiency of the complaint. |
| Office of <u>Compliance Technical Appeals</u> | 5. If no meritorious basis for appeal exists, issues decision <u>the complaint is untimely or fails to meet the requirements of this regulation, dismissing</u> dismisses the technical complaint. 11. Conducts review if the technical complaint merits such. 7.6. Obtains submissions from appointing authority and departmental staff, if required <u>all interested parties.</u> |

~~Office of Compliance~~

~~8.7.~~ If ~~determined~~ necessary, meets with the technical complainant and any other ~~interested~~ persons to review and discuss the appeal.

~~2.8.~~ Prepares and issues technical appeal decision.

Complainant and/or

~~Appointing Authority~~ Interested Party

~~2.9.~~ Applies for leave to appeal to the Employment Relations Board (optional).

~~900.~~ QUESTIONS

CONTACT

~~901. Contact Office.~~ Questions regarding this regulation should be directed to the Office of ~~Compliance~~ Technical Appeals, Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909, (517) 335-4970 or 1-800-788-1766, or MDCS@state.mi.us.

NOTE: Regulations are issued by the State Personnel Director under authority granted in the State of Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations that implement Commission Rules are subordinate to those Rules.